

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2001-650

May 4, 2004

PUBLIC UTILITIES COMMISSION
Investigation Into the Provision of Hub PRI
Service by Verizon in the Service Areas of
Verizon and Independent Telephone
Companies

ORDER CLOSING INVESTIGATION

WELCH, Chairman; DIAMOND and REISHUS, Commissioners

I. SUMMARY

In this Order, we find that the agreement of the parties concerning compensation between Verizon and the independent ILECs is reasonable and we therefore close this investigation.

II. BACKGROUND

On September 26, 2001, we opened an investigation into “the provisioning of Hub-PRI service by Verizon New England Inc. d/b/a Verizon Maine, both in its own service area and in the service areas of the independent incumbent local exchange carriers (ILECs)... .” We had previously ordered Verizon to provide such service as part of our investigation into service by New England Fiber Communications, LLC d/b/a Brooks Fiber that we characterized as “FX-like” and that we had found was unlawful. *Public Utilities Commission, Investigation into Use of Central Office Codes (NXXs) by New England Fiber Communications, LLC d/b/a Brooks Fiber*, Docket No. 98-758 (*Brooks Investigation*).

The scope of the investigation in this docket included implementation of Verizon Hub-PRI service in the independent service areas and the question of compensation between Verizon and the ITCs. With regard to implementation, we had been informed that the parties were actively engaged in resolving “technical issues.” We stated that we would conduct formal proceedings as to implementation only if necessary. With regard to compensation, we stated our awareness that Verizon and the independents had tried to resolve that issue, but had failed.

In the Order Addressing Rate Structure that we issued in this docket on November 13, 2001, we summarized our findings and orders in the *Brooks Investigation*:

In the Brooks Investigation, we ordered Verizon to offer a state-wide, flat-rated, discounted service to internet service providers (ISPs) that would serve as a substitute for a service offered by Brooks that we previously found to be

unreasonable and unlawful. We required that the service be available on a single-number basis, i.e., it should use no more than one NXX code. We ruled that the service was an interexchange service, and we ordered Verizon to provide the service both in its own local exchange service areas and in the service areas of the ITCs because all except two of the ITCs do not provide interexchange services in their own service areas, and because Verizon did provide such service in those areas. The ITCs would provide "access" to Verizon, i.e., the wholesale services necessary for the switching and transport to the meet point of the Hub-PRI traffic that originates in their service areas.

We also required Verizon to price the service at a substantial discount from retail toll or wholesale access services, based on the requirement of 35-A M.R.S.A. § 7104 that there be "affordable" access to the internet and other computer-based information services. ...

Finally, we required that the service be flat-rated (non-usage-sensitive) to ISPs and toll-free to ultimate end-users, i.e., to the ISPs' subscribers. The flat rating of the service to ISPs reflects the fact that ISPs generally charge their customers on a flat-rated basis and that customers expect that kind of pricing both for internet service itself and for telephone network access to ISPs.

Order Addressing Rate Structure at 2 (footnotes omitted).

Following written submissions and oral argument, the November 13, 2001 Order Addressing Rate Structure decided first that it was:

inappropriate for Verizon to pay the ITCs per-minute charges for the origination of Hub-PRI traffic that is destined for termination at ISPs in Verizon's service area. If Verizon must pay per-minute charges for a component of the service it must offer on a flat-rate basis, particularly where that service is substantially discounted, it runs the risk that its costs might exceed its revenues.

Id. at 3.

We also decided that the rate structure should be "usage-sensitive" in the sense that Verizon would have to pay (albeit on a flat-rate basis) the independents based on the capacity the independents had to provide for Verizon's Hub-PRI traffic. Finally, we decided that the rate should be based on the independents' revenue requirements, individually or collectively.

The Ordering Paragraph of the November 13, 2001 Order stated:

That the parties shall develop and propose a rate or rates that Verizon will pay to independent telephone companies for the services provided by those companies in connection with processing and transporting Verizon Hub-PRI traffic that originates in those companies' service areas. The proposed rates shall comply with the rate structure directives of this Order. The parties shall file their proposed rates and supporting materials on or before December 4, 2001.

On April 14, 2004, two and a third years following the date that the parties were supposed to file “proposed rates,” Verizon filed a copy of an agreement between itself and Pine Tree Telephone and Telegraph Company, one of the independent ILECs. Verizon stated that this agreement was “representative” of and substantively identical to all the other agreements between Verizon and the independent ILECs. According to the Commission staff, both Verizon and representatives of the independents had stated that the parties had reached agreement some time ago, but that it had not been reduced to writing. The Staff had requested the parties to provide a copy of the agreement on several occasions.

III. DISCUSSION

Although the completed agreements go beyond the “proposed rates” anticipated by the November 13, 2001 Order, we commend the parties for engaging in productive negotiations and reaching agreement, following what appeared to be a substantial impasse. We also find the agreements comply with the “rate structure directives” of the November 13, 2001 Order. Specifically, they establish flat-rate pricing by Verizon to the independent ILECs, based on the amounts of capacity that the independent ILECs must provide to carry Verizon’s Hub-PRI traffic that originates in independent ILEC service areas. Accordingly, we find that the goals of this investigation have been achieved and we close it.

We must comment, however, on an assertion by Verizon in its April 14, 2004 cover letter that “these agreements do not have to be filed with the Commission pursuant to [35-A M.R.S.A.] Section 7901 (which empowers the Commission to develop terms for the exchange of traffic only where the parties ‘have failed to establish’ rates on their own)... .” The Commission did not open this investigation pursuant to 35-A M.R.S.A. § 7901, nor is that section the sole source of the Commission’s jurisdiction to consider and make findings about the reasonableness of intercarrier compensation arrangements. The Notice in this proceeding did not state specific statutory authority for this investigation. It was a direct continuation, however, of the Commission’s *Brooks* Investigation (simultaneously, in the same Order, the Commission limited the *Brooks* Investigation to compliance issues by Brooks). That investigation had been opened pursuant to the Commission’s general investigatory powers under 35-A M.R.S.A. §§ 1303 and 1306. The Commission ordered Verizon to provide Hub-PRI service in the *Brooks* Investigation and also required Verizon to provide it on a state-wide basis, i.e., in independent ILEC service areas as well as its own. The Commission’s order to the parties to file a rate proposal that complied with the “rate structure directives” decided in this case was fully within its authority. Even though the parties reached agreement, the Commission has full authority to consider the agreements and determine whether they met the directives established in this case.

Accordingly, we

1. FIND that the compensation agreements between Verizon and the independent ILECs (as represented by the agreement between Verizon-Maine and Pine Tree Telephone and Telegraph Company filed on April 14, 2004) comply with the “rate structure directives” contained in the Commission’s Order Addressing Rate Structure issued on November 13, 2001; and
2. ORDER this Investigation closed.

Dated at Augusta, Maine, this 4th day of May, 2004.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Diamond
 Reishus

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.